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No. 03-901

Supreme Court, U.S.
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In The
Supreme Court of the United States

ONYX ACCEPTANCE CORPORATION,

Petitioner,

v.

GERALD P. LAMPLEY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals misapplied properly stated law when it found that there was sufficient evidence to support the jury's finding that Petitioner did not engage in good faith efforts to implement an anti-discrimination policy where no written anti-discrimination policy was introduced into evidence and there was evidentiary support for the finding that the employer engaged in a cover-up, rather than in a good faith effort to comply with the law.

2. Whether the Court of Appeals erred when it found that the combined compensatory and punitive damages jury award of $300,000 as reduced by the trial court to the statutory maximum, was not excessive under the circumstances given the facts of the case, including that no written anti-discrimination policy was introduced into evidence, there was evidentiary support for the finding that the employer engaged in a cover-up rather than in a good faith effort to comply with the law, and where both Respondent and his wife testified to the on-going negative effects of the retaliatory termination on his emotional state.[1]

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[1] Petitioner provides a page and a half of unnecessary detail and then frames the following questions for review: 1) "[W]hether punitive damages can be assessed against the employer on the basis of the decision of managerial agents acting contrary to the employer's anti-discrimination policies promulgated and implemented in good faith"; and 2) "[W]hether damages here, assessed at the maximum amount permitted by law, were excessive." Respondent believes that a review of the record will show a great deal of evidence that at the highest levels the corporation engaged in a cover-up rather than implementing the alleged (never presented) anti-discrimination policy.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Authorities	iii
Introduction	1
Statement of the Case	3
Reasons for Denying the Writ	4
I. Petitioner has not identified any division among the federal courts on the application of *Kolstad*	4
II. Petitioner has failed to provide any compelling reason for this Court to review the combined compensatory and punitive damages award in this case	6
Conclusion	9

TABLE OF AUTHORITIES

Page

CASES

Kolstad v. American Dental Association, 527 U.S. 526, 119 S. Ct. 2118 (1999) 1, 4, 5, 6

Fine v. Ryan International Airlines, 305 F.3d 746 (7th Cir. 2002) 8

Hall v. Consolidated Freightways Corp. of Delaware, 337 F.3d 669 (6th Cir. 2003) 5

Hennessy v. Penril Datacomm Networks, Inc., 69 F.3d 1344 (7th Cir. 1995) 8

STATUTES

42 U.S.C. § 2000e *et seq.* 4

INTRODUCTION

Respondent Gerald P. Lampley, Plaintiff below, submits this Brief in Opposition to the Petition for a Writ of Certiorari, filed by Petitioner Onyx Acceptance Corporation.

Petitioner has advanced no compelling reason for this Court to grant its Writ of Certiorari. Instead, Petitioner has basically renewed its challenge to the sufficiency of the evidence, a challenge rebuffed by the jury, which answered specific special interrogatories, rebuffed by the trial judge, and rebuffed by a unanimous appellate court panel.

Moreover, Petitioner has not identified for the Court, any division among the federal courts on either the application of *Kolstad v. American Dental Association*, 527 U.S. 526, 119 S. Ct. 2118 (1999) or the evidentiary standards for proving mental anguish and emotional distress or of the standards for reviewing punitive damage awards for excessiveness.

Indeed, Petitioner has failed to present this Court with concise questions for review, and has failed to present its arguments with the clarity essential to the ready and accurate understanding of the points requiring consideration by this Court.

Finally, Petitioner has misstated several key facts in its Petition, facts which would bear on the issues before the Court if certiorari were granted. Petitioner even frames his first question for review around a misstatement of fact in the record. Petitioner claims in its Petition that it had an anti-discrimination policy which was promulgated and implemented in good faith, but the jury found otherwise.

The Court of Appeals determined that the jury could have concluded that Petitioner had no anti-discrimination policy either promulgated *or* implemented (no written policy was submitted to the jury) in good-faith, and could have also found that the Petitioner engaged in a cover-up, rather than in a good-faith investigation of Respondent's claims of discrimination and retaliation.

In addition, Petitioner continually states that Respondent was being terminated due to poor job performance and that the decision to terminate Respondent was made prior to his visiting the Equal Employment Opportunity Commission: "The evidence was unrebutted that Lampley's superiors determined to fire Lampley [Respondent] for lack of job performance and advised Ms. Hokanson a week prior to Lampley's termination that Lampley was to be terminated" (*Petition* at 10); and "The Record evidence stood undisputed that Ms. Hokanson was advised several days before Lampley went to the EEOC that the branch office had decided to terminate Lampley" (*Petition* at 14). A great deal of evidence was presented to the contrary, and the jury found otherwise.[2]

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[2] At the request of the Defendant, the trial court submitted a special interrogatory to the jury: "Did Michael Strater or any other Onyx executive, make a decision to terminate plaintiff before plaintiff went to EEOC?" Answer, "No." Petitioner asserts as fact a proposition that is nonsensical at best, *i.e.*, that although the jury believed neither Michael Strater nor any other Onyx executive, made a decision to terminate Respondent before he went to the EEOC, they also believed that Michael Strater had somehow informed corporate offices of a decision that he made to terminate Respondent prior to Respondent's visit to the EEOC – a decision to terminate which the jury expressly found that he did not make.

For all of these reasons, as will be more fully explained below, the Petition for Writ of Certiorari should be denied.

STATEMENT OF THE CASE

The Respondent, Gerald P. Lampley, is African-American. Lampley was employed as an account manager by the Petitioner, Onyx Acceptance Corporation, from February, 1998, until he was fired on November 29, 1999, three days after he had gone to the Equal Employment Opportunity Commission ("EEOC") to file a complaint of race discrimination.

Lampley returned to EEOC and filed a second charge against Onyx, this one for retaliatory discharge. During its investigation of both charges, the EEOC was told by Onyx that Lampley had not been held back because of his race nor fired because he had gone to the EEOC. Rather, Onyx stated, Lampley's performance was inadequate, and provided the EEOC with a spreadsheet demonstrating Lampley's alleged performance deficiencies to back up its proffered legitimate non-discriminatory reasons for its actions. At trial Lampley introduced evidence which showed that the spreadsheet contained false information. Lampley had not only met, but had exceeded his performance goals.

After conducting its investigation the EEOC determined that it could not sustain Lampley's charges and sent him two letters dismissing the charges and giving him the right to sue Onyx. This suit followed.

Trial began on April 22, 2002, before the Hon. William Hibler and an eight person jury. Lampley's Second Amended Complaint alleged violations of Title VII, 42 U.S.C. § 2000e *et seq.*, and consisted of two counts. Count I alleged race discrimination and Count II alleged retaliatory discharge. On April 29, 2002, the jury returned a finding of liability on Count I and awarded $1,000 compensatory damages and nothing in punitive damages. On Count II the jury returned a finding of liability and awarded $75,000 in compensatory damages and $270,000 in punitive damages, which was later reduced by $45,000 to comply with the statutory cap.

On appeal to the Seventh Circuit Court of Appeals, Onyx appealed only the retaliatory discharge award, arguing that the $300,000 award, as reduced, was excessive and that the punitive damages issues should not have gone to a jury. The Court of Appeals found that a jury could have reasonably determined that an award of punitive damages was warranted and that a total award of $345,000 (the unreduced award) was not excessive.

This Petition for a Writ of Certiorari followed.

REASONS FOR DENYING THE WRIT

I. PETITIONER HAS NOT IDENTIFIED ANY DIVISION AMONG THE FEDERAL COURTS ON THE APPLICATION OF *KOLSTAD*.

Petitioner has not identified for the Court any division among the federal courts on the application of *Kolstad*. 527 U.S. 526, 119 S. Ct. 2118 (1999). Nor has Petitioner even suggested that *Kolstad* left unclear the role that a paper policy prohibiting discrimination in the workplace might

play on the issue of imputing vicarious liability for punitive damages to the employer. Instead, Petitioner has basically renewed its challenge to the sufficiency of the evidence, a challenge rebuffed by the jury (which answered special interrogatories), the trial judge, and a unanimous appellate court panel.

Although Petitioner claims again and again that it engaged in good-faith efforts to comply with Title VII, the evidence presented at trial belies that claim. No written anti-discrimination policy was ever presented to the jury. Moreover, Respondent submitted evidence to the jury which, if believed by the jury, would show that Onyx, after finding out about Lampley's claims for race discrimination and retaliatory discharge, doctored data to discredit Lampley. In addition, although a corporate representative testified at trial that she had seen a written reprimand in Lampley's file, at trial, no reprimand could be found. The jury could have believed, and apparently did, that the corporate representative was not being truthful about the written reprimand, that the reprimand never existed, and that the testimony from the Onyx representative was not truthful. It is hardly a good-faith implementation of such an anti-discrimination policy (assuming the jury believes in its existence) to trump up pretextual justifications for termination. Petitioner's assertion of good-faith implementation was flatly rejected at trial due to its inconsistency with documentary and testimonial evidence. *See, e.g, Hall v. Consolidated Freightways Corp. of Delaware*, 337 F.3d 669, 675 (6th Cir. 2003) ("Defendant is correct in its assertion [about *Kolstad*]. However, the record does not support Defendant's assertion in this case.").

Indeed, Petitioner's characterization of the good-faith defense in *Kolstad* as an "empty promise," *Petition* at 13, is

belied by the numerous cases in which employers have been completely insulated from punitive damages due to their actual good-faith efforts. *Kolstad*'s promise can readily be fulfilled, but there must be proof of its predicate, not merely a paper policy (and there was not even a paper policy in this case). Contrary to Petitioner's assertion, the Court of Appeals' decision to affirm the trial court's findings does not undercut *Kolstad*'s protection to employers who have made good-faith efforts to comply with Title VII.

II. PETITIONER HAS FAILED TO PROVIDE ANY COMPELLING REASON FOR THIS COURT TO REVIEW THE COMBINED COMPENSATORY AND PUNITIVE DAMGES AWARD IN THIS CASE.

Again, Petitioner has not identified any division among the federal courts on the evidentiary standard for proving mental anguish and emotional distress in Title VII cases, or any division on the standard for review of punitive damages award for excessiveness.

Rather, Petitioner asks this Court to determine whether the damages were excessive in light of the testimony about how Respondent suffered from his retaliatory discharge and what Petitioner did to camouflage that retaliation. The total of compensatory and punitive damages were, until remitted, slightly over the statutory maximum and quite proportionate on the facts believed by the jury.

The tone and content of the Petition suggest that Petitioner has suffered an injustice by being held liable for retaliation. The record at trial reflects direct evidence

criticizing Respondent for going to the EEOC and explaining that Petitioner cannot have employees who do so. That record also demonstrates that in mounting a defense, Petitioner concocted low figures for Respondent's productivity and an exculpatory time-line for the discharge decision. Finally, that record details how Respondent's life was changed by being discharged in retaliation for going to the EEOC.

Petitioner repeatedly uses a standard – the annual salary of an employee – to illustrate the excessiveness of the damages award. Petitioner does not, however, submit that this Court, or any Court, has or should adopt that standard. Lowly paid employees would be especially vulnerable were damages measured by annual salary.

Equally perplexing is Petitioner's emphasis on its internal processes for addressing employee complaints. Respondent had the absolute right to contact the EEOC rather than invoke the company's internal processes when he believed that he was being discriminated against because of his race. This is not a hostile environment situation where an employer could, absent the tangible action of discharge, pursue an affirmative defense that it was denied the opportunity to remedy harassment.

Because the trumped-up defenses occurred *after* Petitioner had gone to the EEOC, the punitive damages award is hardly impeached by the existence of those processes. Petitioner's outrage to this day that Respondent preferred the EEOC to those processes certainly explains, however, the retaliatory discharge. Obviously, this Court ought not add a requirement to Title VII's retaliation provision that immunizes employers whose employees choose to seek recourse from the enforcement agency

established by Congress rather than pursue internal processes.

Similarly, this Court ought not confuse economic damages with compensatory and punitive damages. Petitioner recounts Respondent's ability to secure a better-paying position and intimates that his dedication to his career and providing for his family must mean that he suffered only minor discomfort from the retaliatory discharge. Congress provided for separate categories of damages and amended Title VII largely because economic damages did not capture the depth and scope of harm inflicted by discrimination and retaliation.

Petitioner cites *Hennessy v. Penril Datacomm Networks, Inc.*, for the proposition that in the Seventh Circuit, the statutory maximum can only be awarded in the most egregious cases, 69 F.3d 1344, 1355 (7th Cir. 1995), and insists that its behavior was not egregious. However, the Seventh Circuit has also explained that it will not normally disturb an award of damages in a Title VII case at or under the statutory cap, as that decision is "largely within the province of the jury." *Fine v. Ryan International Airlines*, 305 F.3d 746, 755 (7th Cir. 2002). Petitioner has pointed to no case in the Seventh Circuit or elsewhere which proposes that a punitive damage award at or near the statutory cap is excessive where there is evidence to support a finding that an employer engaged in a cover-up in flagrant violation of Title VII. Contrary to Petitioner's assertions, the Court of Appeals' decision in this case neither condones excessive punitive damages, nor conflicts with its earlier precedent.

Underlying Petitioner's arguments are fallacious and preposterous principles that have not been followed by the

lower federal and state courts and, particularly on the facts developed at trial and credited by the jury, should garner no following in this Court. In summary, there is no reason for this Court to grant this Petition and ample reason to let the verdict, judgment, and appellate decision stand.

CONCLUSION

Because Petitioner has not advanced any compelling reason for this Court to review the decision of the United States Court of Appeals, the Petition for Certiorari should be denied.

Dated: January 22, 2004

Respectfully submitted,

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